

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Southern California Edison Company (E 3338-E) for Authority to Institute a Rate Stabilization Plan with a Rate Increase and End of Rate Freeze Tariffs.

Application 00-11-038
(Filed November 16, 2000)

Emergency Application of Pacific Gas and Electric Company to Adopt a Rate Stabilization Plan.
(U 39 E)

Application 00-11-056
(Filed November 22, 2000)

Petition of THE UTILITY REFORM NETWORK for Modification of Resolution E-3527.

Application 00-10-028
(Filed October 17, 2000)

OPINION ON REQUEST FOR INTERVENOR COMPENSATION

This decision awards Greenlining Institute and Latino Issues Forum (Greenlining/LIF) \$221,709.81 in compensation for its contribution to Decision (D.) 01-01-018 and D.01-03-082. The award is substantially less than requested by Greenlining/LIF, chiefly owing to our rejection of Greenlining/LIF's proposed 1.25 multiplier to be applied to all of its hourly attorney rates.

1. Background

Greenlining/LIF's compensation request results from its work in these two major 2001 energy decisions, which addressed the above applications of Pacific Gas and Electric Company (PG&E) and Southern California Edison Company

(Edison) for immediate rate increases in response to extraordinary circumstances in California's wholesale power markets.

D.01-01-018 is an interim opinion responding to emergency requests of PG&E and Edison to raise rates on an interim basis, subject to refund. Prior to D.01-01-018 the Commission had issued D.00-12-067, which consolidated these applications and a petition filed by The Utility Reform Network (TURN). In addition, the Commission incorporated the record developed in the post-transition ratemaking proceedings (Phase 3 of A.99-01-016, et al.) in its consideration of the Rate Stabilization Plan applications.

In D.01-01-018, the Commission implemented an immediate, interim Emergency Procurement Surcharge (EPS) of one-cent per kilowatt hour (kWh) on an equal cents per kWh basis. The result was to increase rates by about 9% for residential customers, 7% for small business customers, 12% for medium commercial customers, and 15% for large commercial and industrial customers. Low-income customers eligible for California Alternative Rates for Energy (CARE) were exempted from the increase. The Commission provided these increases in order to improve the ability of the applicants to cover costs of procuring energy in wholesale markets to serve their loads.

These surcharge revenues are tracked in a balancing account subject to refund, and are applied to the ongoing wholesale electricity procurement costs. In taking this action, the Commission invoked its emergency authority, noting that rates charged by PG&E and Edison were frozen at 1996 levels, yet both utilities are compelled to purchase wholesale electric power at so-called market based rates that have been found by the Federal Energy Regulatory Commission not to be just and reasonable. As a result, the applicants contend they are experiencing severe financial difficulties.

In approving an interim rate increase subject to refund, the Commission balanced the public interest between moderating rate increases and ensuring the ability of applicants to procure and deliver power. The Commission explained the emergency nature of current cash flow, short-term access to capital markets, and the potential for problems with system reliability as a consequence of cash flow constraints and inability to borrow. While the utilities requested substantially greater increases in rates than those granted and an end to the rate freeze, they also proposed that ratepayers would bear the burden of higher rates and not shareholders. In its response to these requests, the Commission noted many benefits received by shareholders as a result of restructuring, and the transfer of funds from the utilities to their holding companies. D.01-01-018 postponed other issues to the next phase of these proceedings, including conservation, rate design, additional CARE discounts, and consumer education.

D.01-03-082, issued in the second phase, is an interim opinion granting PG&E and Edison authority to increase rates by an additional three-cents per kWh over rates adopted in D.01-01-018. D.01-03-082 provided these additional increases in further response to the continuing emergency in the electric industry. D.01-03-082 modified accounting rules in order to evaluate the full consequences of those accounting rules established to implement Assembly Bill (AB) 1890, and to adjust rates in the future, if warranted. D.01-03-082 adopted Greenlining/LIF's proposal to shelter low-income households eligible for the CARE program by exempting these customers from the three-cent surcharge and expanding the eligibility criterion from 150% to 175% of federal poverty guidelines.

In this phase of the proceeding five issues were considered:

- (1) Review of the independent audits of PG&E and Edison, and determination of whether or not the Commission should grant further rate increases;
- (2) TURN's accounting proposal to reconcile various balancing and memorandum accounts;
- (3) Consideration of whether the rate freeze under AB 1890 has ended on a prospective basis;
- (4) Parties' proposals for tiered residential rates; and
- (5) Greenlining/LIF's CARE proposal.

In its discussion of the first issue, D.01-03-082 concludes from the audits that the utilities are experiencing serious financial shortfalls in revenues necessary to provide adequate electric service to their customers and rate relief is necessary. On the second issue, the Commission adopted changes in accounting rules which recognize amounts utilities realized both on their sales of capital assets and in revenues from selling electricity generated by their own plants. On the third issue, the Commission found that under AB 1890 the rate freeze has not ended for either PG&E or Edison as all of their stranded costs have not been recovered under any scenario proposed by any party. On the fourth issue, D.01-03-082 declined to adopt tiered residential rates, but provided parties an opportunity for comments through an Assigned Commissioner's Ruling.

On the fifth issue, the CARE discount, the Commission considered four proposals by Greenlining/LIF:

- (1) Exemption of CARE-eligible customers from the current surcharges and any increases that result from implementation of AB1X;
- (2) Increasing the CARE discount from 15% to 25%, applicable to all Edison and PG&E customers, including PG&E's gas customers;

- (3) Increasing the CARE eligibility criterion from 150% to 175% of federal poverty guidelines; and
- (4) A favorable ruling on Greenlining/LIF's motion for clarification of D.01-01-018 regarding application of the EPS exemption.

D.01-03-082 affirmed the intent of AB1X to exempt CARE customers from the EPS, and indicated the Commission will determine whether similar exemptions apply to any additional increases that result from implementation of AB1X. The Commission also liberalized the eligibility criterion as Greenlining/LIF requested, and directed both PG&E and Edison to consult with Greenlining/LIF and the Public Advisor's Office on notification to customers. While not adopting Greenlining/LIF's proposal for an increase in the CARE discount, the Commission stated it will consider this issue in current related proceedings.

On May 29, 2001, Greenlining/LIF filed its request for compensation for its substantial contribution to D.01-01-018 and D.01-03-082. After discussion with the assigned ALJ, Greenlining/LIF filed errata to its request on August 9, 2001. The errata provide additional information and support for Greenlining/LIF's request for a 1.25 multiplier applied to the fees for attorneys Brown, Gnaizda, and Witteman. Applying the 1.25 multiplier to these attorney fees, and correcting certain errors in the number of hours increases the original request from \$238,513.31 to \$290,804.37. The errata include attachments for each attorney describing time spent by date on various activities related to work on issues. Greenlining/LIF waived the time of its Executive Director John Gamboa in its compensation request.

2. Requirements for Awards of Compensation

Intervenors who seek compensation for their contributions in Commission proceedings must file requests for compensation pursuant to Pub. Util. Code §§ 1801-1812.¹ Section 1804(a) requires an intervenor to file a notice of intent (NOI) to claim compensation within 30 days after the prehearing conference or by a date established by the Commission. The NOI must present information regarding the nature and extent of the customer's² planned participation and an itemized estimate of the compensation the customer expects to request. The NOI may request a finding of eligibility.

The customer, either at the NOI stage or later, must also show that the costs of effective participation, if not compensated, would constitute a “significant financial hardship” (as defined by Section 1802(g)) for the customer. Regarding Greenlining/LIF, we had made a finding of significant hardship by ruling on April 4, 2000 in another proceeding (I.98-02-025). This recent finding, pursuant to Section 1804(b)(1), creates a rebuttable presumption of Greenlining/LIF's eligibility for compensation in other Commission proceedings, such as the consolidated proceedings here, that start within a year of the finding. No one has challenged this presumption, so we find Greenlining/LIF continues to be eligible under the statute and prior ruling.

Other code sections address requests for compensation filed after a Commission decision is issued. Section 1804(c) requires an eligible customer to

¹ All citations are to the Pub. Util. Code.

² To be eligible for compensation, an intervenor must be a customer as defined by Section 1802(b). In D.98-04-059 (footnote 14), we affirmed our previously articulated interpretation that compensation be proffered only to customers whose participation arises directly from their interests as customers. (See D.88-12-034, D.92-04-051, and

Footnote continued on next page

file a request for an award within 60 days of issuance of a final order or decision by the Commission in the proceeding. Greenlining/LIF timely filed its request for an award of compensation on May 29, 2001, and provided errata on August 9, 2001. Under Section 1804(c), an intervenor requesting compensation must provide “a detailed description of services and expenditures and a description of the customer’s substantial contribution to the hearing or proceeding.”

Section 1802(h) states that “substantial contribution” means that,

“in the judgment of the commission, the customer’s presentation has substantially assisted the commission in the making of its order or decision because the order or decision has adopted in whole or in part one or more factual contentions, legal contentions, or specific policy or procedural recommendations presented by the customer. Where the customer’s participation has resulted in a substantial contribution, even if the decision adopts that customer’s contention or recommendations only in part, the commission may award the customer compensation for all reasonable advocate’s fees, reasonable expert fees, and other reasonable costs incurred by the customer in preparing or presenting that contention or recommendation.”

Section 1804(e) requires the Commission to issue a decision that determines whether the customer has made a substantial contribution and what amount of compensation to award. The level of compensation must take into account the market rate paid to people with comparable training and experience who offer similar services, consistent with Section 1806.

D.96-09-040.) In today’s decision, we use “customer” and “intervenor” interchangeably, as does the statute.

3. Substantial Contribution to Resolution of Issues

Under Section 1802(h), a party may make a substantial contribution to a decision in one of several ways. It may offer a factual or legal contention upon which the Commission relied in making a decision, or it may advance a specific policy or procedural recommendation that the ALJ or Commission adopted. A substantial contribution includes evidence or argument that supports part of the decision even if the Commission does not adopt a party's position in total.

Greenlining/LIF notes that its representatives attended all hearings during the December 26, 2000 to January 4, 2001 time frame, presented testimony, cross-examined witnesses, and participated in final argument. Greenlining/LIF realized its prime goal in D.01-01-018 when the Commission adopted an exemption for low-income customers from the EPS. The remaining Greenlining/LIF issues (CARE discount, eligibility and consumer education) were considered in the next phase of the proceeding.

In this next phase, culminating with D.01-03-082, Greenlining/LIF filed an Emergency Motion for Notification to CARE eligible customers. Greenlining/LIF then met with PG&E and Edison to craft Memorandums of Understanding regarding customer notification. As first adopted in D.01-01-018, D.01-03-082 also adopted Greenlining/LIF's position that low-income customers should be exempt from any EPS. Furthermore, D.01-03-082 adopted two other Greenlining/LIF policy positions: (1) that the CARE eligibility criterion should be liberalized; and (2) that CARE eligible customers be made aware of the program through consumer education and notice. While we did not adopt Greenlining/LIF's remaining policy position on increasing the CARE discount from 15% to 25%, this issue was remanded to other current related proceedings for both electric and gas customers. Greenlining/LIF made a substantial

contribution on all of these issues as discussed in both D.01-01-018 and D.01-03-082.

4. Overall Benefits of Participation

In D.98-04-059 the Commission adopted a requirement that a customer demonstrate its participation was “productive,” as that term is used in Section 1801.3, where the Legislature gave the Commission guidance on program administration. (See D.98-04-059, mimeo. at pp. 31-33, and Finding of Fact 42.) In that decision we discuss the requirement that participation must be productive in the sense that the costs of participation should bear a reasonable relationship to the benefits realized through such participation. Customers are directed to demonstrate productivity by assigning a reasonable dollar value to the benefits of their participation to ratepayers. This exercise assists us in determining the reasonableness of the request and in avoiding unproductive participation.

In D.01-01-018 and D.01-03-082 we adopted Greenlining/LIF’s primary proposal to exempt CARE customers from the electric rate surcharge. Taken alone, this exemption provides a benefit to those low-income customers which substantially exceeds Greenlining/LIF’s requested compensation. In addition, we liberalized the CARE eligibility criterion and adopted programs for outreach and customer notification all as proposed by Greenlining/LIF. These actions provide additional benefits to the low-income customers represented by Greenlining/LIF.

Although we did not accept in D.01-03-082 Greenlining/LIF’s proposal to increase the CARE discount, we are considering that proposal in other related proceedings. Overall, Greenlining/LIF’s proposals for low-income customers provided significant benefits to this very large customer group. Thus, Greenlining/LIF’s participation was productive.

5. Hours Claimed

In the original compensation request, later corrected in the errata, Greenlining/LIF provided records of the time spent by each of its attorneys, witnesses, and staff on a daily basis. The records provide brief descriptions of the activities for each of the persons for whom Greenlining/LIF requests compensation, with time recorded in tenths of an hour, or quarter of an hour. An error in addition reduced total hours for Witteman by about 3.3 hours.

Unfortunately Greenlining/LIF did not originally summarize hours by the year in which work was accomplished, either year 2000 or year 2001. As a result, we have used information from the errata and the compensation request, determined the number of hours by year for each of the five persons for whom compensation is requested, and applied these hours to our adopted hourly rates as discussed below in determining adopted amounts for attorney, witness and analyst fees. We have made two adjustments to the claimed hours for Witteman. One adjustment is a reduction of 23.0 hours for work claimed before the filing of TURN's Petition for Modification on October 17, 2000 that initiated this proceeding. A second reduction of 3.3 hours results from an arithmetic error. In future compensation requests, we expect Greenlining/LIF to summarize the hours for each of its attorneys, witnesses, analysts, and other staff by year. This will allow us to more efficiently process its compensation requests, and reduce the possibility of calculation errors.

6. Hourly Rates

Greenlining/LIF requests \$290,804.37 as follows:

Attorney's Fees

Chris Witteman	485.2 hours @ \$265/hour x 1.25	= \$160,722.50
Susan E. Brown	169.55 hours @ \$275/hour x 1.25	= 58,282.81
Robert Gnaizda	114 hours @ \$310/hour x 1.25	= 44,175.00

Expert Witness Fees

Viola Gonzales	17.2 hours @ \$ 250/hour	= \$ 4,300.00
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Senior Analyst

Jose Hernandez	161.75 hours @ \$115/hour	= \$ 18,601.25
Subtotal		= \$286,081.56

Other Costs

Consultant's Fee (Meg Powers)	\$	720.00
Copying		2,624.25
Postage		868.29
Travel Expenses		510.27
Subtotal		= \$ 4,722.81
TOTAL		= \$290,804.37

Greenlining/LIF requests hourly rates as described above multiplied by a factor of 1.25 for its attorneys. An hourly rate multiplier is not requested for its witness or its analyst. Greenlining/LIF also provided a "Declaration of Richard M. Pearl in Support of Request for Compensation." This declaration provides a summary of various legal fees charged by certain law firms based on their attorneys' years of experience. In D.02-05-011, we thoroughly reviewed hourly rates for Greenlining/LIF's attorneys and certain staff, and ordered revisions to

several decisions awarding compensation to Greenlining/LIF.³ Consistent with rates adopted in D.02-07-030 and requested here, we will use the following rates:

Gnaizda - \$310 per hour for 2000, and \$310 per hour for 2001

Brown - \$275 per hour for 2000, and \$275 per hour for 2001

Gnaizda and Brown requested \$310/hour and \$275/hour, respectively, for all hours of work in this proceeding. Because the adopted 2001 rates do not reflect any change from 2000 rates to account for changes in market rates for legal services, the 2001 rate utilized today should not limit the Commission's ability to set different rates for 2001 in a different proceeding.

Having reviewed Witteman's declaration included in Greenlining/LIF's claim, we note that he has been an attorney since 1984 and has worked on various telecommunications cases while in private practice since 1989. He began appearing before the Commission in 1998. For Witteman's work in 2000, we will award compensation at \$255/hour, consistent with the rate requested for his work in other proceedings. (See e.g., D.02-07-030.) For work in 2001, we will award compensation at the rate requested, \$265/hour. We make the change to Witteman's previously adopted 2000 rate based on our comparison of the market rates, as described in Of Counsel and the hourly rates awarded to other intervenors, with similar backgrounds and experience, who appeared before the Commission over the same time period.

D.02-05-011 did not modify the 2000 hourly rate adopted for Hernandez. Greenlining/LIF provided no new information about Hernandez or Gonzales; therefore, we will utilize their previously adopted rates for 2000. However, we increase those rates by \$5/hour for work in 2001 to account for increases due to inflation and additional experience before the Commission.

³ D.02-05-011, Ordering Paragraph 4, p. 9.

In summary, we will use the following rates:

Witteman - \$255 per hour for 2000, and \$265 per hour for 2001

Gonzales - \$135 per hour for 2000, and \$140 per hour for 2001

Hernandez - \$75 per hour for 2000, and \$80 per hour for 2001

A more significant difference between the award and Greenlining/LIF's request is due to our rejection of an hourly multiplier. Greenlining/LIF's request states that a multiplier is justified as its work established precedent for low-income customers regarding CARE eligibility and CARE outreach. Furthermore, Greenlining/LIF quotes our recognition of its success reaching a Memorandum of Understanding regarding customer notification. We agree with Greenlining/LIF that these were important issues, and were resolved consistent with positions advocated by Greenlining/LIF in D.01-01-018 and D.01-03-082.

However, our standards for applying hourly multipliers to attorney fees are necessarily high. If we did not set and maintain high standards, many attorney fees in compensation requests would include such multipliers and we would no longer be adopting attorney fees based on market rates for comparable training and experience as required by Section 1804.

As we stated in D.98-04-059, we have included hourly rate multipliers when a customer's participation involved skills or duties beyond those normally required, such as when an attorney develops and sponsors technical testimony, in addition to his/her work as an attorney. As we stated in D.88-02-056 and reiterated in D.00-10-007, an upward adjustment in base level of compensation depends on many factors. Factors that can be considered in making this determination are:

A. Fee Level

1. The experience, reputation and ability of the attorney
2. The skill required to perform the legal service properly
3. Customary fee

B. Compensable Hours

1. The time and labor required (reasonable number of hours to present the case)
2. Efficiency of presentation
3. Novelty and difficulty of the issues
4. Duplication of effort

C. Degree of Success

1. Dollar amount involved
2. Degree of importance of the issue
3. The result obtained (partial or complete success on the issue)

As we further stated, “of course, these factors are not to be applied to a rigid manner. Some factors will apply to particular elements at times and at other times the factors will be considered in adjusting the overall award. These final adjustments can logically take the form of flat dollar amounts, percentage increases/decreases to either the base award or number of hours, and finally the hourly fee can be enhanced or reduced.” (D.00-10-007, p. 13.)

Weighing these factors, we find that the issues in this proceeding were not of such novelty or complexity as to justify application of a multiplier. Greenlining/LIF’s participation was successful, but we recognize that success by awarding compensation for all of the almost 950 hours claimed, without any reduction for issues on which Greenlining/LIF did not prevail.

7. Other Costs

Greenlining/LIF requests \$4,722.81 in other costs (photocopying, postage, travel, and consulting). Included in other costs are eight hours (\$90/hour) of consulting by Dr. Meg Powers for review and preparation of expert testimony. Greenlining/LIF has not requested compensation for fax, phone, internet or LEXIS charges. Greenlining/LIF notes that it has experienced some accounting problems in correctly recording expenses incurred in this proceeding, but has made a best effort to resolve this problem in its request. Our review of the submitted expenses in relationship to the size of the service list (238), the amount of work performed by Greenlining/LIF attorneys and staff, and its choice not to seek any reimbursement for other related costs, leads us to conclude that these other requested costs are reasonable. However, as we noted above in our discussion on hourly recordkeeping, we expect Greenlining/LIF to maintain and provide adequate records for us to determine exactly the amounts of reasonable expenses in future compensation requests.

8. Award

We award Greenlining/LIF \$222,308.31 calculated accordingly:

Attorney Fees:

Wittelman	173.2 hours (2000) x \$255/hour	= \$ 44,166.00
	285.7 hours (2001) x \$265/hour	= 75,710.50
Brown	3.0 hours (2000) x \$275/hour	= 825.00
	166.55 hours (2001) x \$275/hour	= 45,801.25
Gnaizda	114 hours (2001) x \$310/hour	= 35,340.00

Expert Witness Fees:

Gonzales	17.2 hours (2001) x \$140/hour	= 2,408.00
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Senior Analyst

Hernandez	40.75 hours (2000) x \$75/hour	= 3,056.25
	121.0 hours (2001) x \$80/ hour	= <u>9,680.00</u>

Subtotal = \$ 216,987.00

Other costs (photocopying, consultant fees, postage) = 4,722.81

Total = \$ 221,709.81

Since both PG&E and Edison have approximately equal California jurisdictional electric revenues, we will assess responsibility for payment 50% to PG&E and 50% to Edison, per the method adopted in D.98-04-059.

Consistent with previous Commission decisions, we will order that the utilities pay interest on their respective shares of the award amount (calculated at the three-month commercial paper rate), commencing October 23, 2001 (the 75th day after Greenlining/LIF filed its errata to its compensation request) and continuing on the unpaid amount until each utility makes its full payment of award.

As in all intervenor compensation decisions, we put Greenlining/LIF on notice that the Commission staff may audit Greenlining/LIF's records related to this award. Thus, Greenlining/LIF must make and retain adequate accounting and other documentation to support all claims for intervenor compensation. Greenlining/LIF's records must identify specific issues for which it requests compensation, the actual time spent by each employee, the applicable hourly rate, fees paid to consultants, and any other costs for which compensation may be claimed. In future claims, Greenlining/LIF must eliminate or minimize the errors and other accounting problems which have made calculation of this award time-consuming and unnecessarily complicated.

9. Public Review and Comment

Pursuant to Rule 77.7(f)(6), the otherwise applicable 30-day period for public review and comment of this compensation decision is being waived.

Findings of Fact

1. Greenlining/LIF has made a timely request for compensation for its contribution to D.01-01-018 and D.01-03-082.
2. Greenlining/LIF has made a showing of significant financial hardship by demonstrating the economic interests of its individual members would be small compared to the costs of participating in this proceeding.
3. Greenlining/LIF contributed substantially to D.01-01-018 and D.01-03-082.
4. The adopted adjusted hourly rates for attorneys and experts are no greater than the market rates for individuals with comparable training and experience.
5. The adopted hourly rates that were requested for attorneys Brown and Gnaizda are based on rates that have previously been approved by the Commission.
6. The 2000 hourly rate for Witteman, \$255/hour, is based on the rate requested in other proceedings for his services. The 2001 hourly rate for Witteman, \$265/hour, is based on our comparison of market rates and the hourly rates for intervenors with similar experience.
7. The analyst work rates of \$75 and \$80 per hour provide reasonable compensation for Jose Hernandez, for work in 2000 and 2001, respectively.
8. Expert witness rates of \$135 and \$140 per hour provide reasonable compensation for Viola Gonzales' professional services in 2000 and 2001, respectively, considering her experience, effectiveness, and rates paid other experts.
9. The miscellaneous other costs incurred by Greenlining/LIF are reasonable.
10. It is appropriate to divide the responsibility for award payment equally between PG&E and Edison.

Conclusions of Law

1. Greenlining/LIF has fulfilled the requirements of Sections 1801-1812 which govern awards of intervenor compensation.
2. Greenlining/LIF should be awarded \$221,709,81 for its contribution to D.01-01-018 and D.01-03-082.
3. Per Rule 77.7(f)(6) of the Commission's Rules of Practice and Procedure, the comment period for this compensation decision is waived.
4. This order should be effective today so that Greenlining/LIF may be compensated without unnecessary delay.

O R D E R

IT IS ORDERED that:

1. Greenlining Institute and Latino Issues Forum (Greenlining/LIF) is awarded \$221,709.81 in compensation for its substantial contribution to Decision (D.) 01-01-018 and D.01-03-082.
2. Pacific Gas and Electric Company (PG&E) and Southern California Edison Company (Edison) shall each pay Greenlining/LIF \$110,854.91 within 30 days of the effective date of this order. PG&E and Edison shall also pay interest on the award at the rate earned on prime, three-month commercial paper, as reported in Federal Reserve Statistical Release H.15, with interest, beginning October 23, 2001, and continuing until full payment is made.
3. The comment period for today's decision is waived.

This order is effective today.

Dated _____, at San Francisco, California.